



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION
Case #: FOO - 174638

PRELIMINARY RECITALS

On May 26, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS). The hearing was held on June 28, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly determined the Petitioner's FS benefits effective February 1, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On December 21, 2015, the Petitioner completed a FS renewal. On December 22, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would be \$31/month effective February 1, 2016. This was based on income from Social Security of \$816.78/month and rent expense of \$450/month which includes utilities. The notice also informed the Petitioner of the right to appeal the agency determination by filing a hearing request with the Division of Hearings and Appeals by May 2, 2016.
3. On May 26, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing examiner may only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if an appeal is not timely filed. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. See 7 C.F.R., § 273.15(g).

In this case, the Petitioner's appeal was filed 24 days beyond the appeal deadline. Therefore, the Division of Hearings and Appeals does not have jurisdiction and cannot rule on the merits of the case. Though there is no jurisdiction, I did review the agency's calculations and find no error in the determination regarding the Petitioner's FS benefits. I note that the Petitioner's benefits decreased due to a policy change regarding utility deductions. Because the Petitioner's utilities are included in his rent, he no longer receives the maximum deduction that he received in the past. The Petitioner does pay a monthly phone bill so the agency properly allowed a \$30 deduction for that expense. The Petitioner was advised at the hearing that he can submit out-of-pocket medical expenses to the agency for review to determine if he may be eligible for a medical expense deduction.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

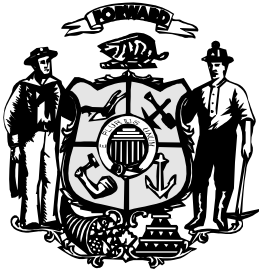
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of July, 2016

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on July 21, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability